Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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SUMMARY

The National Telecommunications Cooperative Association (NTCA) urges the Commission to adopt the recommendation of the vast majority of parties filing initial comments asking the FCC to reject the Joint Board recommendation to limit support to "primary lines." Primary line-based support does not relate to what it actually costs a telecommunications carrier to deploy network infrastructure. Telecommunications providers build networks that are engineered to serve an entire area and the disconnection of a line by a customer does not translate into a corresponding reduction in cost or of the obligation to serve remaining customers. If rural carriers receive support only for those lines designated as "primary" by the customer, they will not receive sufficient and predictable support that allows for the recovery of future investment to serve all customers or of their costs of providing service to non-primary line customers in the high-cost area. Without sufficient and predictable support, rural consumers will ultimately not receive access to reasonably comparable services and rates as required by the Act.

NTCA also urges the Commission to adopt the Joint Board's recommendation to establish more stringent ETC guidelines. The majority of the parties filing initial comments support either mandatory or permissive ETC guidelines. In addition, NTCA believes the Commission should adopt a guideline that calls for a cost-benefit analysis. This guideline would provide that regulators should consider the overall level of per-line support provided to a specific service area. If the per-line support level is high enough in a specific service area, the state commission or the FCC may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the USF. It is critical that the USF be treated by state commissions and the FCC as a scarce national resource and be

carefully managed to serve the public interest. Otherwise, the USF will grow to an unsustainable level and ultimately leave no carrier with sufficient support to provide universal service.

NCTA further recommends that the Commission reject the proposal to freeze per-line support in a rural ILEC service area upon CETC entry. A per-line freeze is the wrong approach to controlling the growth of the high-cost universal service fund. Rather than using a per-line freeze to unjustifiably punish rural ILEC's for providing quality services at affordable prices to rural consumers based on legitimate costs that have justified universal service support, NTCA believes the appropriate approach to control the growth of the fund is to: (1) eliminate the identical support rule, (2) require CETCs to demonstrate their costs and justify their need for support, and (3) require CETCs that justify a need for support to base their support on their own costs, instead of the ILEC's costs.

NTCA supports limiting wireless ETC support to customers that use their supported services predominantly within the ILEC study area for which the wireless ETC is eligible for support. The Joint Board proposal to identify the service area where a wireless ETC supported services are being provided based on the "primary use" standard defines "primary use" as either the residential address of the customer or the primary business location of the customer. This definition, however, is inconsistent with the manner in which consumers use their mobile wireless phones. Consumers use their wireless phones in a variety of locations such as when traveling to and from work, away from home on business or leisure, and at home or at the office. NTCA submits that predominant use is a better measure of determining whether support is being provided for the purpose intended as required by Section 254(e). If a wireless ETC customer predominantly uses their wireless service within the ILEC study area in which it is eligible for support, then the wireless ETC should be eligible to receive support for that customer. If, however, a wireless ETC customer does not predominantly use their wireless service within the ILEC study area in which it is eligible for support, then the wireless ETC should not receive support, particularly support that is not based on its own costs, for this customer. This predominant use standard would assist in ensuring that only eligible wireless customers will receive high-cost support. This standard will also provide the Commission with another means of controlling the future growth of high-cost universal service support.

The Commission should also reject efforts to redefine all rural ILEC services areas along wire center boundaries. Providing service throughout a study area is critical in rural areas where sparse population densities make area-wide coverage less attractive. Redefining all rural ILEC service areas along wire center boundaries would allow wireless carriers to serve just a portion of a rural ILEC's service area. Rural ILEC customers outside of the wireless CETC's targeted rural ILEC wire centers may therefore be forced to pay higher rates to make up lost revenue and suffer decreased quality; at worst, it may destroy a rural telephone company. Before it may designate a carrier at below the study area level, the Commission must determine that such a designation is in the public interest, consistent with the principles of universal service. The mere introduction of competition is not enough to justify the redefinition of a rural ILEC service area. Consumers situated in the rural LECs remaining service area may be irreparably harmed. Section 214's "throughout study area" language contemplates ubiquitous service for all consumers and a level playing field for all competitors.

Lastly, the Commission should protect the long term viability of the fund and adhere to Section 254's requirement of "comparability" and sufficiency by: (1) continuing to permit rate-of-return rural carriers to recover their investment in the total network facilities needed to serve their rural communities; (2) establishing stringent standardized eligibility requirements and public interest test for CETC applicants in rural service areas; (3) eliminating the identical support rule; (4) requiring all CETC universal service fund support to be based on their own costs; and (5) expanding the base of USF contributors to include all cable, wireless and satellite providers of broadband Internet access and facilities-based and non-facilities-based VoIP and IP-enabled service providers.

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NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION REPLY COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] hereby files its reply comments in response to the Federal Communications Commission's (Commission's or FCC's) Notice of Proposed Rulemaking (NPRM) seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding the scope of universal service support and the process for designating competitive eligible telecommunications carriers (CETCs).[2] Silence on any positions or proposals raised by parties in this proceeding connotes neither agreement nor disagreement with their positions or proposals.

I. INTRODUCTION

In its initial comments, NTCA urged the Commission to reject the Joint Board's recommendation to limit support to "primary lines" and to adopt the Joint Board's recommendation to standardize and strengthen the eligible telecommunications carrier (ETC)

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.
[2] *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127, (rel. June 8, 2004) (NPRM).

guidelines. NTCA further recommended that the Commission protect the long-term viability of the high-cost universal service fund (USF) and adhere to Section 254's requirements of comparability and sufficiency by: (1) continuing to permit rate-of-return rural carriers to recover their investment in the total-network facilities needed to serve their rural communities; (2) establishing stringent standardized eligibility requirements and a public interest test for CETC applicants in rural service areas; (3) eliminating the identical support rule; (4) requiring all CETC universal service fund support to be based on the CETC's own costs, not the ILEC's costs; and (5) expanding the base of USF contributors to include all cable, wireless and satellite providers of broadband Internet access and facilities-based and non-facilities-based VoIP and IP-enabled service providers. None of the initial comments filed by other parties has provided any reason for NTCA to change its recommendations in this proceeding

II. THE VAST MAJORITY OF THE TELECOMMUNICATIONS INDUSTRY OPPOSES LIMITING UNIVERSAL SERVICE SUPPORT TO PRIMARY LINES

NTCA, OPASTCO, ITTA, Western Alliance, NECA, USTA, Western Wireless, CTIA, RICA, RTG, RCA, ARC, AT&T Wireless, United States Cellular, Nextel, Bell South, Valor Communications, Iowa Telecom Services, Innovative Telecom, ALLTEL, CenturyTel, TDS, Sprint, Nebraska Rural Independent Telephone Association, Montana Independent Telephone Association, Alaska Telephone Association, South Dakota Telecommunications Association, Dobson Cellular Systems, California Telephone Association Small Company Committee, Colorado Telephone Association, Independent Telephone Companies of Vermont, Indiana Exchange Carrier Association, New Hampshire Telephone Association, Oklahoma Rural Telephone Coalition, Oregon Telecommunications Association, Telephone Association of Maine, Washington Independent Telephone Association, the ILEC Division of the Wisconsin

State Telecommunications Association, TCA, GVNW, and JSI oppose the Joint Board's proposal to limit universal service support to primary lines.[3] All of these parties agree that limiting support to primary lines only is the wrong approach to controlling the future growth of the high-cost universal service fund.

These same parties have detailed the many administrative difficulties that would arise under a primary line policy, which are consistent with Joint Statement of Commissioners Adelstein, Thompson, and Rowe's overview of the numerous administrative hurdles and issues that a primary line limitation would impose on carriers, the Universal Service Administrative Company, state commissions and the FCC.[4] The Senate Appropriations Committee and several rural senators agree.[5] Notwithstanding the administrative burdens and the potential for fraud and abuse of vital USF support under a primary line restriction, the statutory purpose of the high cost universal service program has always been to support network infrastructure in order to ensure that telecommunications and information services in rural areas are comparable to those offered in urban areas and at affordable and comparable rates.

Primary line-based support simply does not relate to what it actually costs a telecommunications carrier to deploy network infrastructure. Telecommunications providers build networks that are engineered to serve an entire area and the disconnection of a line by a customer does not translate into a corresponding reduction in cost or of the obligation to serve remaining customers. If rural carriers receive support only for those lines designated as

[3] AT&T supports limiting USF support to a single line to the home. Verizon supports the Joint Board's proposed rebased primary line restriction. Cox Communications supports the Joint Board's restatement primary line restriction. SBC states that the FCC should limit support to primary lines, but only as part of a comprehensive reform of universal service and only after resolving logistical issues. Qwest supports a primary line restriction based on a default rule whereby the first connection provided to the customer is deemed the primary connection. And NASUCA proposes a balloting process for limiting support to a single connection per-household.
[4] Joint Separate Statement, 19 FCC Rcd 4323.
[5] *See*, "Senators Vote to Prevent USF Primary Line Restriction," TR Daily, September 15, 2004.

"primary" by the customer, they will not receive sufficient and predictable support that allows for the recovery of future investment to serve all customers or of their costs of providing service to non-primary line customers in the high-cost area. Without sufficient and predictable support, rural consumers will ultimately not receive access to reasonably comparable services and rates as required by the Act.[6]

Rural ILECs have made significant investments in the rural high-cost portions of America under an existing universal service support system that allows for full recovery of a sufficient portion of a carrier's embedded costs of total regulated facilities. If these costs are no longer recovered through universal service, and an alternative recovery method is not available or prohibited by regulators, then these costs will become stranded investment.[7] Given the Act's goal of preserving and advancing universal service to ultimately provide consumers with access to advanced telecommunications and information services, limiting support to primary lines would be completely at odds with the intent of Sections 254 and 706 of the Telecommunications Act of 1996. Limiting support to anything less than total network facilities will halt future investment to modernize the telecommunications infrastructure in rural America, threaten the ability of rural ILECs to offer advanced services to their customers, schools, libraries, and health care facilities, and jeopardize the ability of rural carriers to service debt for plant facilities already constructed and lawfully approved by regulators.

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[6] 47 U.S.C. §254(b)(3).

[7] The term "stranded investment" typically means plant facilities that are no longer in use and have not fully recovered their costs. In the context of this proceeding, however, stranded investment can result in plant facilities that are not fully recovering their costs but are still in use.

III. A MAJORITY OF THE INDUSTRY SUPPORTS EITHER MANDATORY OR PERMISIVE ETC GUIDELINES FOR THE FCC AND STATE COMMISSIONS TO APPLY IN ETC DESIGNATION PROCEEDINGS

A host of parties urge the Commission to adopt either mandatory or permissive ETC guidelines for the Commission and state commissions to follow in ETC designation proceedings. They are NTCA, OPASTCO, ITTA, Western Alliance, NECA, USTA, Western Wireless,[8] CTIA,[9] RICA, RTG, Bell South, SBC Communications, Verizon, Valor Communications, Iowa Telecom Services, Innovative Telecom, ALLTEL,[10] CenturyTel, TDS, Sprint, Nebraska Rural Independent Telephone Association, Montana Independent Telephone Association, Alaska Telephone Association, South Dakota Telecommunications Association, California Telephone Association Small Company Committee, Colorado Telephone Association, Independent Telephone Companies of Vermont, Indiana Exchange Carrier Association, New Hampshire Telephone Association, Oklahoma Rural Telephone Coalition, Oregon Telecommunications Association, Telephone Association of Maine, Washington Independent Telephone Association, the ILEC Division of the Wisconsin State Telecommunications Association, TCA, GVNW, JSI, and NASUCA.

The Joint Board recommended permissive federal ETC guidelines for state commissions to consider in ETC designation proceedings. It recognized that the unchecked designation of multiple ETCs create a potential for uncontrolled growth of the fund.[11] The Joint Board's

[8] Western Wireless recommends that if the Commission adopts any of the ETC guidelines proposed by the Joint Board that it make clear that they are non-binding and state commissions need not apply any or all of them. Western Wireless Initial Comments, p. 20.
[9] CTIA supports establishing ETC guidelines provided they do not include equal access, rate regulation, inflexible build-out requirements and overly broad quality of service requirements. CTIA Initial Comments, p 8-14.
[10] ALLTEL supports the Commission's Virginia and Highland Cellular ETC designation criteria. ALLTEL Initial Comments, p. 5.
[11] In the Matter of the Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, ¶ 67, (rel. Feb. 27, 2004) (Joint Board Recommended Decision).

proposed ETC guidelines are intended to assist state regulators in determining whether an ETC designation is in the public interest. These guidelines are also intended to improve the long-term sustainability of the USF by only allowing fully qualified carriers that are capable of, and committed to, providing universal service to be able to receive high cost support. NTCA applauds the Joint Board's efforts in strengthening the ETC eligibility requirements and supports the Joint Board's proposed ETC guidelines.

The Joint Board declined to recommend a specific cost-benefit test for the purpose of making public interest determinations under Section 214(e)(2). The Joint Board, however, did recommend that state commissions consider the level of high-cost per-line support to be received by ETCs. NTCA believes the Commission should adopt a guideline that calls for a cost-benefit analysis. This guideline would provide that regulators should consider the overall level of per-line support provided to a specific service area. If the per-line support level is high enough in a specific service area, the state commission or the FCC may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the USF. It is critical that the USF be treated by state commissions and the FCC as a scarce national resource and be carefully managed to serve the public interest. Otherwise, the USF will grow to an unsustainable level and ultimately leave no carrier with sufficient support to provide universal service.

Rather than simply granting additional ETC designations, the state commissions and the FCC must also look at whether support will in fact promote comparability between rural and urban areas. As Commissioner Adelstein understands "[those performing the public interest analysis] also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service."[12] The Commission should consider following the Missouri Public Service Commission's lead and not grant ETC status to wireless providers that have clearly established an ability to do business and invest based on a business model that does not include high-cost support, but who now seek those funds, claiming that the funds are necessary to serve the same customer base.[13] Congress sought to have specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.[14] Therefore, it is incorrect for regulators to ignore the ultimate sustainability of the high cost universal service program as they consider CETC applications for rural service areas.

State and federal regulators should also consider whether additional ETCs in rural service areas would promote the deployment of advanced services.[15] Artificially induced competition in rural service areas serves to undermine the already weak business case for the deployment of new, costly services by rural telephone companies. It threatens the revenue base for these carriers but does not reduce the investments required to provide service. Since rural ILECs continue to have a "carrier of last resort" obligation, they must continue to maintain the telephone plant necessary to meet this obligation. As a result, multiple CETCs in rural service areas and deployment of advanced services may be in conflict.[16] This is a valid factor that affects rural consumers' access to advanced services and should also be considered in the ETC designation process.

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[12] Speech by Commissioner Jonathan Adelstein, "Rural America and the Promise of Tomorrow," NTCA Annual Meeting & Expo, Phoenix, Arizona (February 3, 2003).

[13] *Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company Eligible for Federal Universal Service Support Pursunat to Section 254of the Telecommunications Act of 1996,* Report and Order, Case No. TO-2003-0531 at 30 (Mousouri Public Service Commission, August 5, 2004).

[14] 47 U.S.C. § 254(b)(5).

[15] *See* 47 U.S.C. § 254(b)(2).

[16] *See* Lehman, Dale, *The Cost of Competition*, Paper 3 of the NTCA 21st Century White Paper Series (December 2000).

IV. WIRELESS CETCS SHOULD ONLY RECEIVE USF SUPPORT FOR CUSTOMERS THAT USE THEIR SERVICE PREDOMINANTLY WITHIN THE ILEC'S SERVICE AREA FOR WHICH IT IS ELIGIBLE FOR SUPPORT

CenturyTel proposes that wireless ETCs only receive high-cost support for customers that use services predominantly within the ILEC study area in which it is eligible for support.[17] Similarly, Sprint states that wireless CETCs support should be based on where the customer actually uses the service and not where the customer actually resides.[18] And the Coalition of State Telecommunications Associations and Rural Telecommunications Companies (the Coalition), recommends that the Commission should limit support to wireless ETC customers that actually use the service at their residence. The Coalition further states that if service is used primarily for commuting or working in rural areas, high-cost support should not be available.[19] NTCA supports limiting wireless ETC support to customers that use their supported services predominantly within the ILEC study area for which the wireless ETC is eligible for support.

The Joint Board proposal to identify the service area where a wireless ETC supported services are being provided based on the "primary use" standard defines "primary use" as either the residential address of the customer or the primary business location of the customer.[20] This definition, however, is inconsistent with the manner in which consumers use their mobile wireless phones. Consumers use their wireless phones in a variety of locations such as when traveling to and from work, away from home on business or leisure, and at home or at the office. NTCA submits that predominant use is a better measure of determining whether support is being provided for the purpose intended as required by Section 254(e). If a wireless ETC customer

[17] CenturyTel Initial Comments, p. 10.
[18] Sprint Initial Comments, p. 35.
[19] The Coalition of State Telecommunications Associations and Rural Telecommunications Companies, p. 1-4.
[20] In the Matter of the Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, ¶¶ 98-103, (rel. Feb. 27, 2004)(Joint Board Recommended Decision).

predominantly uses their wireless service within the ILEC study area in which it is eligible for support, then the wireless ETC should be eligible to receive support for that customer. If, however, a wireless ETC customer does not predominantly use their wireless service within the ILEC study area in which it is eligible for support, then the wireless ETC should not receive support, particularly support that is not based on its own costs, for this customer.

High-cost support is intended to provide service in specific rural high-cost service areas and not for services used outside the high-cost area they were targeted to support. Today's mobile technology allows wireless carriers to identify the location of the caller or recipient at the start of the call. Wireless carriers can currently determine the wireless caller's locations by identifying the cell site the caller is using to originate the call. The Commission, therefore, can implement a "predominant use" standard that is based on actual customer use to determine which wireless customers would be eligible to receive support. This predominant use standard would assist in ensuring that only eligible wireless customers will receive high-cost support. This standard will also provide the Commission with another means of controlling the future growth of high-cost universal service support.

V. THE FCC SHOULD REJECT A PER-LINE FREEZE OF ILEC SUPPORT UPON CETC ENTRY, AND INSTEAD ELIMINATE THE INDENTICAL SUPPORT RULE AND REQUIRE CETCS TO BASE THEIR SUPPORT ON THEIR OWN COSTS

Some parties oppose implementing a per-line freeze on support upon a CETC's entry into a rural ILEC service area[21] and some support the per-line freeze as a means of controlling the growth of the USF.[22] NTCA submits that a per-line freeze is the wrong approach to controlling

[21] See the separate Initial Comments filed by USTA, Western Alliance, and Nebraska Rural Independent Telephone Companies.
[22] See the separate Initial Comments filed by Nextel, Verizon, AT&T, and Cox Communications.

the growth of the high-cost universal service fund. Rather than using a per-line freeze to unjustifiably punish rural ILEC's for providing quality services at affordable prices to rural consumers based on legitimate costs that have justified universal service support, NTCA believes the appropriate approach to control the growth of the fund is to: (1) eliminate the identical support rule, (2) require CETCs to demonstrate their costs and justify their need for support, and (3) require CETCs that justify a need for support to base their support on their own costs, instead of the ILEC's costs.

Congress required restrictions on both the use and level of support. The United States Court of Appeals for the 5th Circuit has already warned: "excessive funding may itself violate the sufficiency requirement of the Act."[23] The Commission, however, has yet to establish a relationship between a CETC's cost and the support the CETC receives. A per-line freeze on ILEC support will not address this fundamental flaw in the Commission's rules and will only make it more difficult for rural ILECs to maintain and upgrade their networks, which will ultimately harm rural consumers. Without predictable support that consistently allows for full cost recovery, a rural ILEC will no longer be able to provide consumers with services and rates that are reasonably comparable to those offered in urban areas. If rural consumers are unable to receive access to reasonably comparable services and rates, then support is not sufficient, under the Act.[24]

The identical support rule provides CETCs with the same per-line support regardless of their cost structure and defeats the Commission's guiding principle of "competitive neutrality." The rule has undermined the Commission's ability to ensure that CETC support is not excessive

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[23] *Texas Office of Public Utility Counsel v. FCC,* 183 F.3d at 412 (U.S.C.A. 5th Cir. 1999) (Excessive funding may itself violate the sufficiency requirement of the Act).
[24] 47 U.S.C. §254(b)(3).

and used for the purposes intended.[25] The rule permits CETCs to receive ILEC per line support for every working loop they serve in the ILEC's service area, regardless of whether the CETC's costs to provide service are below the national benchmark to qualify for support. This is the primary reason for the current and future growth of the high-cost universal service fund.

ILECs are carriers of last resort in their respective study areas and have demonstrated their costs and justified their need for universal service support. Rural ILECs also have a continuing obligation to maintain and upgrade their networks regardless of whether they lose lines to CETCs. CETCs on the other hand have no carrier of last resort obligation or the requirement to demonstrate their costs and justify their need for support. Capping ILEC support upon competitive entry therefore would result in a funding level shortfall for rural ILECs in violation of the Act and in conflict with legitimate costs that were lawfully approved by state and federal regulators. The Commission should therefore reject the per-line freeze proposal and instead eliminate the identical support rule and require all CETCs to base their support on their own costs before they receive any universal service funding. This will enable the Commission to control the growth of the universal service fund and ensure that CETC support is not excessive and used for the purposes intended.

[25] 47 U.S.C. §254(e).

VI. THE MERE PROMOTION OF COMPETITION IS NOT A VALID REASON TO DESIGNATE CETCS BELOW THE STUDY AREA LEVEL IN RURAL AREAS

Some parties have recommended that to enhance competition in rural areas the Commission should redefine all rural ILEC service areas along wire center boundaries.[26] The Commission should reject this proposal because it violates the Act and is bad public policy. In the Commission's *Virginia Cellular* and *Highland Cellular* orders, the FCC explicitly rejected competition as the sole reason for finding a CETC designation to be in the public interest in rural areas.[27] If Congress intended the public interest to be synonymous with competition it would have said so. It clearly did not as it required more than one ETC in non-rural areas but established a "public interest" threshold in rural areas.

Section 214(e)(5) further provides that for an area served by a rural telephone company, the term "service area" means such company's study area. Therefore, if a competitor receives ETC designation for an area served by a rural telephone company, it must offer service throughout the company's study area. The "service area" may only be comprised of something other than the company's study area <u>only if</u> the Commission and the state commission establish a different definition, after taking into account the recommendations of a Federal-State Joint Board. The Commission, therefore, cannot unilaterally redefine all rural ILEC service areas along wire center boundaries without state commission involvement from all States with rural

[26] See the Initial Comments filed by United State Cellular Corporation, Rural Cellular Association and the Alliance of Rural CMRS Carriers.

[27] *In the Matter of the Federal-State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In The Commonwealth of Virginia*, Memorandum and Order, CC Docket No. 96-45, FCC 03-338, ¶ 4, (rel. Jan. 22, 2004)(We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest in rural areas). *In the Matter of the Federal-State Joint Board on Universal Service: Highland Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In The Commonwealth of Virginia*, Memorandum and Order, CC Docket No. 96-45, FCC 04-37, ¶ 4, (rel. April 12, 2004).

ILEC service areas.

When the Joint Board evaluated this issue it recommended with good reason that the Commission retain the current study areas of rural telephone companies as the service areas for CETCs. The Joint Board stated that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "creamskimming" by competitors.[28] "Creamskimming" is minimized because competitors must provide service throughout the rural telephone company's study areas and cannot serve only the lowest cost portions of a rural telephone company's study area. Providing service throughout a study area is critical in rural areas where sparse population densities make area-wide coverage less attractive. Redefining all rural ILEC service areas along wire center boundaries would allow wireless carriers to serve just a portion of a rural ILEC's service area. Rural ILEC customers outside of the wireless CETC's targeted rural ILEC wire centers may therefore be forced to pay higher rates to make up lost revenue and suffer decreased quality; at worst, it may destroy a rural telephone company.

The Commission has a duty to consider the adverse effect on rural customers regardless of the competitive carrier's good or bad intentions. Before it may designate a carrier at below the study area level, the Commission must determine that such a designation is in the public interest, consistent with the principles of universal service. The mere introduction of competition is not enough to justify the redefinition of a rural ILEC service area. Consumers situated in the rural LECs remaining service area may be irreparably harmed. Section 214's "throughout study area" language contemplates ubiquitous service for all consumers and a level

[28] *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 12 FCC Rcd 87, 179-180 (1996).

playing field for all competitors. The Commission should honor Congress's intent and reject efforts to redefine all rural ILEC services areas along wire center boundaries.

VII. CONCLUSION

For the above reasons, NTCA urges the Commission to reject the Joint Board recommendation to limit support to "primary lines." NTCA also urges the Commission to reject the proposal to freeze per-line support in a rural ILEC service area upon CETC entry. NTCA supports the Joint Board's recommendation to establish more stringent ETC guidelines. Lastly, NTCA recommends that the Commission protect the long term viability of the fund and adhere to Section 254's requirement of "comparability" and sufficiency by: (1) continuing to permit rate-of-return rural carriers to recover their investment in the total network facilities needed to serve their rural communities; (2) establishing stringent standardized eligibility requirements and public interest test for CETC applicants in rural service areas; (3) eliminating the identical support rule; (4) requiring all CETC universal service fund support to be based on their own costs, not the ILEC's costs; and (5) expanding the base of USF contributors to include all cable, wireless and satellite providers of broadband Internet access and facilities-based and non-facilities-based VoIP and IP-enabled service providers.

Respectfully submitted,

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September 21, 2004

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Initial Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, FCC 04-127 was served on this 21st day of September 2004 by first-class, U.S. Mail, postage prepaid, to the following persons:

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